**Overseas Motors, Inc.** *and* **Miroljub Mitkovski.** Cases 7-CA-18251, 7-CA-18355, and 7-CA-18477

March 11, 1982

## DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On October 20, 1981, Administrative Law Judge Lowell Goerlich issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order,[3] as modified herein.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Overseas Motors, Inc., Livonia, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete the phrase "and expunge said suspensions from his personnel record" from paragraph 2(b).

2. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs accordingly:

"(c) Expunge from its files any references to the suspensions of Miroljub Mitkovski on September 15 and October 6, 1980, and to his discharge on October 23, 1980, and notify him in writing that this has been done and that evidence of these unlawful actions will not be used as a basis for future discipline against him."

3. Substitute the attached notice for that of the Administrative Law Judge.

## APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT unlawfully interfere with our employees' rights under Section 8(a)(4) of the National Labor Relations Act, or unlawfully suspend or discharge our employees for filing charges with the National Labor Relations Board or for giving testimony under the National Labor Relations Act, as amended, in violation of Section 8(a)(4) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Miroljub Mitkovski, whom the Board found we unlawfully discharged because he filed charges with the National Labor Relations Board, immediate and full reinstatement to his former job or, if his job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, discharging, if necessary, any employee hired to replace him, and WE WILL make him whole, with interest, for any loss of pay he may have suffered because we unlawfully discharged him.

WE WILL additionally make Miroljub Mitkovski whole for any loss of pay he may have suffered by reason of his suspensions on September 15 and October 6, 1980.

WE WILL expunge from our files any references to the suspensions of Miroljub Mitkovski on September 15 1980, and October 6, 1980, and to his discharge on October 23, 1980, and WE WILL notify him that this has been done and that evidence of these unlawful actions

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[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We also find totally without merit Respondent's allegations of bias and prejudice on the part of the Administrative Law Judge, nor do we perceive any evidence that the Administrative Law Judge prejudged the case, made prejudicial rulings, or demonstrated a bias against Respondent in his analysis or discussion of the evidence. We further find that Respondent was accorded a fair hearing in all respects.

[2] Contrary to Respondent's contention, we find the Third Circuit's decision in *Hi-Craft Clothing Co. v. N.L.R.B.*, 660 F.2d 910 (1981), to be inapposite. In that case, unlike the instant case, the discriminatee was a supervisor within the meaning of the Act, and on that basis the court held that the Board had no authority to grant relief.

[3] The Administrative Law Judge inadvertently omitted from his recommended Order and notice a requirement that Respondent expunge from Mitkovski's personnel record any reference to his discharge, as well as to his suspensions. Accordingly, we have added such a requirement.

Member Jenkins would provide interest on the backpay award in accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980).

will not be used as a basis for future discipline against him.

## OVERSEAS MOTORS, INC.

## DECISION

### STATEMENT OF THE CASE

LOWELL GOERLICH, Administrative Law Judge: The charges filed by Miroljub Mitkovski in Cases 7-CA-18251, 7-CA-18355, and 7-CA-18477 on September 15, October 8, and November 5, 1980, were served on Overseas Motors, Inc., Respondent herein, by certified mail on September 17, October 10, and November 8, 1980, respectively. An order consolidating cases and second amended complaint and notice of hearing was issued on December 22, 1980. The original complaint was issued on October 8, 1980, and an amended complaint was issued on October 29, 1980. Complaints in the consolidated cases alleged that Respondent had violated Section 8(a)(1) and (4) of the National Labor Relations Act, as amended, herein referred to as the Act.

Respondent filed timely answers denying that it had engaged in or was engaging in the unfair labor practices alleged.

The consolidated cases came on for hearing in Detroit, Michigan, on July 22 and 23, 1981. Each party was afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered.

### FINDINGS OF FACT, CONCLUSIONS, AND REASONS THEREFOR

#### I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Michigan. At all times material herein, Respondent has maintained its office and place of business at 32400 Plymouth Road in the city of Livonia and State of Michigan, herein called the Livonia place of business. Respondent is engaged in the retail sale and servicing of automobiles. During the calendar year ending December 31, 1979, which period is representative of its operations during all times material hereto, Respondent, in the course and conduct of its business operations, had gross revenues in excess of $500,000 and purchased and received at its Livonia place of business products valued in excess of $50,000 directly from points located outside the State of Michigan.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

#### II. THE UNFAIR LABOR PRACTICES

*First*: On September 15, 1980, Respondent suspended Miroljub Mitkovski for 2 days "for arriving at 10:00 a.m. without valid explanation." (G.C. Exh. 4.) The incident which gave rise to the suspension occurred on September 12, 1980. Mitkovski, who had worked as an auto mechanic for Respondent since the spring of 1976, was given a raise on September 12, 1980, as were other employees. However, Mitkovski was given a 60-cent-an-hour raise whereas the other mechanics received $1.60 an hour. Mitkovski complained to Samuel Demrovsky, "service manager and personnel hiring and firing grievance man" for Respondent. Mitkovski asserted that he was being "discriminated against" and said that he would go to the Secretary of State or the National Labor Relations Board,[1] whichever was responsible for handling the case, where he would file a complaint. Mitkovski continued in his testimony:

> His reply on that—as a matter of fact I have to take back—it was Mr. Demrovsky which is the third brother of Sam Demrovsky. He replied . . . "you will be fired if you do that." So my reply was "I would like to see that happen just for filing the charges that I can get fired." And either Mr. Sam Demrovsky or Andy Demrovsky stated to me, "Okay, you will not be fired but you won't get any jobs to make enough living so you will fire yourself."[2]

Mitkovski then asked approval to "take off" on Monday morning until 10 o'clock so that he could file charges. Demrovsky replied, "I don't care. Okay." However, Demrovsky instructed Mitkovski that he would be required to bring a "written receipt" of where he had been. Also present during this conversation were Andy Demrovsky, John Demrovsky, and Helen Demrovsky.[3]

On the next Saturday, September 13, Mitkovski worked one-half day. Mitkovski inquired of Demrovsky whether he had reviewed the matter of raises and whether he would receive more money. Demrovsky answered that "everything would stay the same." Mitkovski reminded Demrovsky again that he would take time off Monday to file charges. Demrovsky replied, "Suit yourself."

On Monday morning, Mitkovski appeared for work at 10 a.m. Demrovsky asked for a "receipt." Mitkovski responded, "I do not have a receipt. The people I have contacted will contact you very soon; the people from the NLRB will contact you very soon."[4]

On Monday morning Mitkovski called the office of the Secretary of State which informed him that the Secretary of State did not handle Mitkovski's type of complaint. Mitkovski then phoned the National Labor Relations Board in Detroit. He talked to Ms. Sylvia "for about 45 minutes." Ms. Sylvia advised Mitkovski to

[1] Demrovsky admitted that Mitkovski said he was going to the Labor Board.

[2] Demrovsky's affidavit to the Board includes the statement: "I recall that he was firing himself."

[3] As used herein Demrovsky will refer to Samuel Demrovsky unless otherwise noted.

[4] Respondent had working rules which were committed to writing in June 1980 entitled, "Charter of Bylaws." Under the bylaws only absences of over 2 days were required to have a "valid explanation in writing." One of the benefits cited in the bylaws was: "Days off will be granted when asked with no pay." No employee had ever been asked to furnish a written "receipt" under circumstances similar to Mitkovski's case.

come to the office at 1:15 p.m. to "talk with her some more, and to file the charges."

After the above conversation with Demrovsky, Mitkovski went to work on his job. At or around 10:45 Demrovsky approached Mitkovski and gave him the suspension above noted. When Mitkovski inquired as to why he was given the suspension, Demrovsky said, "Well, you came in late and you didn't have no written receipt, no written receipt where you have been."

Demrovsky's affidavit to the Board reveals, "I decided to issue the suspension to Mitkovski on September 15, 1980, because he told me he was going to the Labor Board. I felt that by telling me this he was trying to test me to see what I would do. I felt it was necessary to crack down then."[5]

*Second*: On October 6, 1980, Mitkovski was again suspended, this time for 3 days. Citing punch-in times of 8:19, 8:46, and 10:59 for Friday (October 3), Saturday (October 4), and Monday (October 6), respectively, the suspension read, "No improvement in starting time therefore third warning must be issued, which is also the last one."[6] (G.C. Exh. 6.)

On October 6, 1980, Mitkovski arrived at work at or about 8:15 a.m. Mitkovski asked Demrovsky whether he could be excused until 10 o'clock since he had an appointment with his lawyer. Demrovsky answered, "If you don't have enough work you can go." Mitkovski returned around 10:15. Demrovsky called him to his desk and asked him where he had been. Mitkovski replied, "I went to see my lawyer." Demrovsky entered in a book the date, "ten ten, went to see lawyer." Around 10:50 Demrovsky asked Mitkovski whether he had punched in. Mitkovski had forgotten and then punched in. He returned to his job. At 12:30 p.m. Demrovsky received a telephone call from Patrick Labadie from the Board's Detroit office. Demrovsky was informed that the National Labor Relations Board had decided to issue a complaint in respect to Mitkovski's charge.

Thereafter Demrovsky brought Mitkovski the suspension letter above mentioned. After Mitkovski read the suspension letter he reminded Demrovsky that he had asked for the time off and otherwise would not have left. Later in the day Mitkovski wanted to discuss the matter with Demrovsky. Demrovsky commented, "I am fed up of your threats and the only way I can listen what you talk is with the representative or the NLRB or the lawyer and I am not going to personally talk with you."

*Third*: On October 23, 1980, Mitkovski was discharged. On October 21, 1980, the investigator for the National Labor Relations Board visited Demrovsky. After the investigator left Demrovsky went to the place where Mitkovski was working and said, "You know, Miro, I think it is better for you if you look for another job." Mitkovski asked why and said that he did not intend to quit. Demrovsky replied, "You might not but you might be fired tonight or tomorrow. We will see."

On October 23, 1980, Mitkovski was called to the salesroom in the presence of Samuel and Andy Demrovsky. Thus Mitkovski describes what occurred:

> A. When I went there he explained to me that I had my first warning letter; that I had my second warning letter and I had my third warning letter, so he also blamed me that I falsified Mr. Terry Gonterman's timeclock from I believe it was October 4 on that Saturday when he punched along with me. We both punched at eight forty-six. I don't know why. Why should I falsify some timeclock to eight o'clock when it doesn't help my case? It just ruins it. . . .
>
> He claimed that I falsified that. He had already my check prepared and he also told me that he has got a letter from the insurance company that they are threatening that I would have put them on high risk policy because of me having suspended driving license. Then he said the company already had lost a suit and they were on a high risk policy at the moment when I was dismissed. . . .
>
> I tried to ask, first of all I tried to tell him that the first letter of May 20th is outdated because of by-laws of the company says it takes three letters. . . .[7]

Mitkovski asked for a letter of dismissal which was refused by Demrovsky.

The problem with insurance apparently arose because Mitkovski held a suspended driver's license.

The renewal date of Respondent's insurance policy with Citizens Insurance Company was November 9, 1980. Sometime prior to that time the insurance agency, Kapnick and Company, Inc., requested data on Respondent's employees who would be covered by the insurance. The purpose of this inquiry was to ascertain if any of Respondent's employees were high risks.

Demrovsky had known for over a year that Mitkovski's driver's license had been suspended.[8] On this point Demrovsky testified:

> Back to the driver's license situation. I knew he had driver's license suspended. I knew every bit of it and I had pushed him to get it reinstated. I was hiding in '79. Mr. Spain does not have a check on him because I purposely was trying to save Mr. Mitkovski's job by saying, look, you must have your driver's license because the insurance is going to cancel me. These were numerous warnings. Not only for the time but for the driving record and of course the misconduct with the customers. They were given not only to him but a couple other em-

[5] Of this statement Demrovsky testified, "It is the truth and it still exists. However, there should be a division made."

[6] Mitkovski had been late on the average of two or three times a week during his entire tenure of employment. He had received one written disciplinary warning for tardiness on May 20, 1980. Mitkovski continued to be late after May 20 without written warning until September 15, 1980.

[7] On May 20, 1980, Mitkovski had received a warning letter in respect to his "8:45 arrivals." Mitkovski testified that he was told that this letter would not count toward dismissal since it was dated prior to the issuance of the written "Charter of Bylaws." Demrovsky denied Mitkovski's testimony.

[8] Mitkovski's driver's license had been suspended on October 7, 1979, and December 9, 1979, for failure to appear in court for "energy speed" violations. At the time of the hearing herein he had cleared up the violations and held a valid license.

ployees their records were bad but he had no driver's license.[9]

Demrovsky also testified, "I didn't want to fire that man [Mitkovski], so he doesn't lose his job. I was—well, I was doing everything in my power not to have him terminated."

In regard to the insurance company's request to furnish names of employees, Demrovsky testified:

> Now this letter is in September, the early part of September, *which is well before the National Labor Relations Board ever got into the act of filing these suits.*
>
> They had requested and were furnished names, addresses as stated, and, therefore, were not furnished immediately because *I was trying to see how I could go around, how I could go around by not revealing the record of our employees, especially Miro Mitkovski. I couldn't help it.*
>
> There was a second request letter that come in which we did not answer the first one. Voluntarily I didn't answer it. *I wanted to save the man's job.* Therefore, we did answer the second one and they found out there is a license that is in suspension with a couple of warrants out for arrest in Westland and Livonia. [Emphasis supplied.]

After the "National Labor Relations Board . . . got into the Act" Demrovsky submitted the names and received a communication thereafter dated September 23, 1980, from Donald E. Spain, vice president in charge of sales of Kapnick and Company, Inc. Spain commented on the "bad" employees and asked "what we can do about the real bad ones." (G.C. Exh. 8.) Comments were made about three employees: Concerning Mitkovski: "FAC means he failed to appear in Court. Otherwise he ignores the law" and "Should not drive Co. cars"; Vulicevia: "should not drive company cars"; Schueltz: "This guy also ignores the law. Twice he failed to appear in court."

About the first or middle of October Spain conversed with Demrovsky. While Spain was not wholly clear as to the scope of the conversation he testified that he "indicated" to Demrovsky that "having an employee with an expired driver's license created a very serious problem for us, and to continue on with that kind of an employee driving a company vehicle would probably result in termination of insurance, at least with this carrier." According to Spain, Demrovsky asked him to "write this letter simply to validate with the employee that [his] statement to them is in fact true." On October 21, 1980, Spain addressed a letter to Demrovsky as requested, citing Mitkovski's failure to "meet the underwriting standards set by your insurance carrier." (G.C. Exh. 7.) Upon receipt of the letter Demrovsky immediately fired Mitkovski.

On November 3, 1980, Demrovsky advised Kapnick and Company, Inc., by letter, that Mitkovski had been discharged on October 23, 1980.

Demrovsky testified that prior to October 23, 1980, he had never mentioned to Mitkovski "the possibility of discharge." Mitkovski's driving record was never submitted to the insurance carrier to ascertain whether it would cover him (Spain represented the agency), nor did Respondent request that Mitkovski's name be submitted to the carrier for an opinion. At the time of Mitkovski's discharge Respondent's insurance was effective and would not have expired until November 9, 1980. Moreover, the insurance could not have been canceled except upon 10 days' notice. Mitkovski, prior to his discharge, was not given the opportunity to reinstate his driver's license.

In respect to unacceptable driving records Spain stated the policy thus:

> We simply explain to the clients that a person with a driving record that is unacceptable will not be able to drive company cars. If the job compels that they do then some action has to be taken. This is entirely up to the employer.

During the hearing Demrovsky cited several other reasons which were considered by Respondent in discharging Mitkovski. These reasons generally involved alleged misconduct which had been overlooked by Respondent prior to Mitkovski's contact with the Board and which had not been initially cited as reasons for discharge.[10]

In his affidavit Demrovsky described his discharge of Mitkovski as follows:

> I said we had a larger problem, that we could not get insurance on him to cover his driving to and from work and his driving of company and customer's cars. I showed the letter from Donald Spain. He read the letter. He did not say anything. I told him he was discharged immediately. That he should pick up his toolbox and leave. He said so that's it huh? And I said, yes, that was it. Mitkovski then locked his toolbox and left. That was all that was said. I did not mention that Mitkovski had changed Terry Gonterman's timecard. [G.C. Exh. 11.]

Demrovsky's affidavit further reveals: "My policy is that I will keep an employee who has a bad driving record as long as he has a license that is in effect."

Demrovsky further testified that Mitkovski was a good auto mechanic.

*Fourth*: The General Counsel has established through credible evidence and by the admission of Demrovsky ("I decided to issue the suspension to Mitkovski on September 15, 1980, because he told me he was going to the Labor Board") that Mitkovski was suspended on September 15, 1980, because he expressed the intention of complaining to the National Labor Relations Board. The suspension of Mitkovski "because he made known a decision to seek Board assistance" interfered with the rights guaranteed under Section 8(a)(4) of the Act and was in

[9] Spain was the insurance agent.

[10] Demrovsky, at the hearing, asserted as additional reasons for discharge horseplay, use of the telephone, an expired mechanic's license, and "fondling of female customers." No written warnings were ever given for any of this alleged misconduct.

violation of Section 8(a)(4) of the Act. *Hoover Design Corporation*, 167 NLRB 461, 462 (1967); *Mitsubishi Aircraft International, Inc.*, 212 NLRB 856, 866 (1974). Moreover, for the same reason Respondent violated Section 8(a)(4) when it threatened Mitkovski that he would not "get any jobs to make enough living so [he] would fire [himself]" if he filed a complaint with the Board and when Respondent required Mitkovski to present a receipt of his contact with the Board's offices. These actions of Respondent placed an unlawful restraint on Mitkovski whereas the Act demands that there be free access to its protection. To hold otherwise would afford the employer a means by which it could frustrate the Act and render Section 8(a)(4), as here, ineffective under certain circumstances. This the Act forbids. Additionally, the General Counsel has established that Mitkovski was suspended again on October 6, 1980, almost immediately after Respondent had been notified that the Board was issuing a complaint on Mitkovski's charge even though a cause for the suspension had been tardiness for which Mitkovski had been excused. (Mitkovski had been excused to see his lawyer.) It is obvious that Respondent was prompted by Mitkovski's charge filed with the Board when it suspended him. Thereby Respondent violated Section 8(a)(4) of the Act.[11]

In respect to Mitkovski's discharge, the General Counsel's *prima facie* case disclosed that (1) Respondent threatened that if Mitkovski complained to the Labor Board he would not receive any desirable working assignments; (2) Respondent suspended Mitkovski on September 15 and October 6, 1980, because he had filed charges with the Board; (3) Mitkovski was considered a good auto mechanic; and (4) Mitkovski was discharged shortly after the investigator from the Board visited Respondent, after which visit Respondent remarked to Mitkovski that it was "better" for him to "look for another job" and that he "might not but [he] might be fired tonight." Thus a *prima facie* case has been established that Mitkovski was discharged because he filed charges with the Board. Cf. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1981).

Respondent seeks to rebut the *prima facie* case by offering evidence that Mitkovski was discharged, since to have continued him on its payroll would have caused its insurance carrier to have refused to renew its insurance, because Mitkovski's driver's license was suspended. That this reason was pretextual is borne out by these facts: Prior to Mitkovski's filing charges with the Board, Respondent knew of Mitkovski's driving record and concealed it from the insurance company in order to retain Mitkovski on its payroll. In fact Respondent did not respond to the insurance agency's first request for its employees' names in order that the agency could check them for driver risk so that those employees who were potential risks, including Mitkovski, could be protected on its payroll. It was only after the Board matter surfaced that Respondent abandoned its concealment and furnished the insurance agency the information it sought. Although the insurance carrier had not evaluated Mitkovski as a risk, Respondent discharged him nevertheless.

Finally, at the time of Mitkovski's discharge Respondent's insurance was in effect and would not have expired until November 9, 1980. Thus, there was no need for Respondent's precipitous discharge action. In this respect this case is not unlike the case of *Golden Beverage of San Antonio, Inc.*, 256 NLRB 469 (1981), in which the Board found wrongful discharges when the "Respondent has failed to advance a cogent explanation indicating a nondiscriminating motive for the discharges of these three employees, which occurred prior to their actual exclusion from insurance coverage." The respondent had discharged them because its insurance carrier had indicated that it would exclude them from coverage. As in the *Golden Beverage* case Respondent in the instant case had "used alleged problems involving insurance coverage to mask its real reasons." Clearly Respondent discharged Mitkovski in retaliation for his protected activity of contacting the National Labor Relations Board and filing a charge with it; Respondent thereby violated Section 8(a)(4) of the Act.

## CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the policies of the Act for jurisdiction to be exercised herein.

2. By unlawfully threatening Miroljub Mitkovski that he would not "get any jobs to make enough living so [he] would fire [himself]" if he filed a complaint with the National Labor Relations Board, and by requiring Mitkovski to present a receipt of his contact with the National Labor Relations Board, Respondent violated Section 8(a)(4) of the Act.

3. By unlawfully suspending Mitkovski for 2 days on September 15, 1980, and for 3 days on October 6, 1980, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(4) of the Act.

4. By unlawfully discharging Mitkovski on October 23, 1980, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(4) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

It having been found that Respondent has engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that Respondent unlawfully discharged Miroljub Mitkovski on October 23, 1980, in violation of Section 8(a)(4) of the Act, it is recommended, in

[11] The General Counsel has cited *Alleluia Cushion Co., Inc.*, 221 NLRB 999 (1975), to support the claim that Mitkovski was engaged in concerted activities and thus Respondent's misconduct violated Sec. 8(a)(1) of the Act. This case is not apposite. *Alleluia Cushion Co., Inc.*, involved alleged violations of occupational safety which, although raised by an individual only, were found by the Board to encompass the well-being of fellow employees. Unlike the discriminatee in the *Alleluia Cushion* case Mitkovski's complaint was wholly personal. It involved the denial of a wage increase which concerned Mitkovski only. The complaint did not encompass the working conditions of any other employees. Hence there was no concerted activity and no violation of Sec. 8(a)(1) of the Act.

accordance with Board policy, that Respondent offer said employee immediate and full reinstatement to his former position or, if such position no longer exists, to substantially equivalent employment, without prejudice to his seniority or other rights and privileges previously enjoyed, dismissing, if necessary, any employee hired on or since October 23, 1980, to fill any of said positions,[12] and make him whole for any loss of earnings he may have suffered by reason of Respondent's acts herein detailed by payment to him of a sum of money equal to the amount he would have earned from the date of his unlawful discharge to the date of an offer of reinstatement, less net earnings during such period, with interest thereon, to be computed on a quarterly basis in the amount and manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[13]

It is further recommended that Miroljub Mitkovski be reimbursed for any loss of pay by reason of his unlawful suspensions, with interest, in accordance with the Board's usual policy, and that his suspensions be expunged from his personnel record.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

## ORDER[14]

The Respondent, Overseas Motors, Inc., Livonia, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully interfering with employees' 8(a)(4) rights.

(b) Unlawfully suspending or discharging employees for filing charges with the National Labor Relations Board or for giving testimony under the National Labor Relations Act, as amended, in violation of Section 8(a)(4) of the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Offer Miroljub Mitkovski immediate and full reinstatement to his former position or, if such position no longer exists, to a substantially equavalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, discharging, if necessary, any employee hired to replace him, and make him whole for any loss of pay he may have suffered by reason of Respondent's unlawful discharge of him in accordance with the recommendations set forth in the section of this Decision entitled "The Remedy."

(b) Make whole Miroljub Mitkovski, with interest, for any loss of pay he may have suffered by reason of his unlawful suspensions on September 15 and October 6, 1980, and expunge said suspensions from his personnel record.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Livonia, Michigan, establishment copies of the attached notice marked "Appendix."[15] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations of the Act other than those found in this Decision.

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[12] Respondent is not precluded, in subsequent compliance proceedings, from contending that, after a good-faith exploration of Mitkovski's insurability, he is actually uninsurable with any carrier, and that its backpay liability should be commensurably reduced. See *Golden Beverage of San Antonio, Inc.*, *supra*. See also *Viele & Sons, Inc.*, 227 NLRB 1940, 1950, 1951 (1977).

[13] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[14] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[15] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."